

DECODING CHINA'S OCCUPATION

Relevant for: International Relations | Topic: India - China

A view of Pangong Tso. | Photo Credit: Getty Images/iStockphoto

There are three reasons why India should be particularly concerned about China's construction activities on Pangong Tso. One, India's war with China in 1962 revealed its diplomatic miscalculations and inadequacies in defence preparedness. China surprised India with an announcement in 1957 that it had built a road through Aksai Chin linking Tibet and Xinjiang. India protested this move formally in 1958. There is still trauma in India surrounding that war. Two, China does not seem to favour the idea of entering into treaties for resolving territorial disputes and maritime disputes with its neighbours. Recently, China began constructing a bridge on a portion of Pangong Tso which India claims is its international boundary and is within its territory. A portion of the area has been under Chinese control since 1958. The Pangong Tso saw military action between the Indian and Chinese forces in 1962. There were confrontations between the forces of the two countries in 2017, and in 2020, violent clashes resulted in casualties. Three, what is most worrying is that China does not adhere to the general rules of international law; rather, it tries to derive its claims on the basis of historic rights to the detriment of the rights of its neighbours, as is the case with its claims in the South China Sea.

China's belligerent action and military strategy to acquire territory place Pangong Tso in the category of occupied and disputed territory. In the eyes of international law, occupation is a temporary phenomenon. The Permanent Court of Arbitration's Award in the Island of Palmas case noted that only the continuous and peaceful display of territorial sovereignty (peaceful in relation to other States) is as good as a title; the title based on contiguity has no standing in international law. India has neither accepted China's unjustified claims on that portion nor its construction activities. Therefore, China cannot take the plea that India has acquiesced; that there is an expression of consent by conduct or inaction by India. In contemporary international law, the most realistic approach to settling a border agreement is to create in each other shared expectations of mutual obligation. What is important is an indication to the other party that a final commitment has been made.

Perhaps the best provisions in contemporary international law for understanding territorial questions are Article 2(3) and Article 2(4) of the UN Charter. All the members are required under Article 2(4) to refrain in their relations with one another from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the UN. All the members have to settle their disputes by peaceful means.

China could take the plea that it is building a bridge peacefully; that it not causing damage to human beings or property. There are several judgments by the International Court of Justice (ICJ) relating to a state's non-violent construction of activities in disputed and occupied territory to clarify the situation in Pangong Tso. In 'Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory', the ICJ examined the inadmissibility of acquisition of territory by force. The court took the position that the construction of a wall in the Occupied Palestinian Territory case strongly indicated a breach of Article 2(4). The court observed that the construction of the wall created a "fait accompli" on the ground that could well become permanent, and hence tantamount to a *de facto* annexation. Therefore, the ICJ seems to have decided in the case that the construction of the wall amounted to the acquisition of territory by force.

The ICJ judgment in 'Certain Activities Carried out by Nicaragua in the Border Area' is also

important in understanding China's moves. The court described the construction of *caños* (pipeline) and deployment of troops in Costa Rica by Nicaragua as a violation of the territorial sovereignty of Costa Rica. It added that Nicaragua's consideration that its activities are within its own territory does not exclude the possibility of characterising the activities as unlawful.

Thus, the fact that China is constructing a bridge on the lake without using armed force or without using fire or causing injury to humans does not make the activity lawful. In the Certain Activities Case, Judge Robinson described Nicaragua's construction activities in Costa Rica as "non-violent use of force". The message from these ICJ judgments is that if a state with the help of its military presence tries to change the status quo peacefully in a disputed and occupied territory, such a move stands to be unlawful.

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